IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 155 of 1998 along with
RFA No.174 of 1998

Judgement reserved on: 25.5.2007

Date of decision: 28.6.2007.

1.RFA No.155 of 1998

Smt. Kundlu Devi & Ors. …….Appellants

Vs.

Secretary (PWD) Govt. of H.P. & Ors. …. Respondents.

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2. RFA No.174 of 1998

Secretary (PWD) Govt. of H.P. & Ors. …. Appellants

Vs.

Smt. Kundlu Devi & Ors. …..Respondents

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellants : Mr. Dushyant Dadwal, Advocate

(in RFA No.155 of 1998 and for the respondents in RFA No.174 of 1998).

For the Respondents : Mr. M.L. Chauhan, Additional Advocate General.

(in RFA No.155 of 1998 and for the appellants in RFA No.174of 1998)

Kuldip Singh, Judge.

This judgment shall dispose of RFA No.155/98 and RFA No.174/98 as both of them have arisen from award dated 17.11.1997

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

passed by learned District Judge, Shimla in L. Ref. No.7-S/4 of 1996. The parties are referred in the same manner as in the impugned award.

2. The facts in brief are that in the year 1960, 8 bighas 10 biswas land forming part of khasra number 208 (new khasra No.2104) situate in village Gangtoli , now village Banchuna, which was owned and possessed by the petitioners, had been utilized by the Government of Himachal Pradesh for construction of a road namely Lal Dhank-Rohru-Rajban road. The land was not acquired nor any compensation was paid to the petitioners. A writ petition was filed in the year 1993 seeking directions against State of H.P. to pay compensation for the aforesaid land. The High Court vide order dated 29.9.1994 issued a writ directing the State of H.P. etc. to determine and pay compensation to the petitioners for the aforesaid land in accordance with law.

3. The State of H.P. issued notification under section 4 of the Land Acquisition Act, 1894 (for short 'Act'), which was published in the Rajpatra on 31.12.1994. The Collector ultimately made the award on 9.8.1995.

4. The petitioners were not satisfied with the quantum of compensation awarded by the Collector. They preferred reference petition under Section 18 of the Act for enhancement of compensation. It has been alleged that the Collector has assessed the market value of the land at the rate of Rs. 30,000/- per bigha but the value of the land at the time of notification under Section 4 of the Act was not less than rupees three lacs per bigha. The acquired land

is situated at a distance of 500 meters from the main bazaar Rohru which is a fast developing town and where all facilities like Hospital, School, College, Post Office etc. are available. The acquisition has resulted in severance of holding, but no compensation has been paid on this count. The interest has not been paid as per statutory provisions . The increase has not been awarded as per Act. The land at the time of utilization was Bagicha Bakhal Awal but the Collector has treated it of a very low class.

5. The Collector in his reply has stated that market value of the acquired property was assessed in accordance with the approval conveyed by the Government. It has been denied that inadequate compensation has been paid to the petitioners. The interest has been paid in accordance with the statutory provisions. It has been denied that due to acquisition the other property of the petitioners has been injuriously affected on account of the severance of holding.

6. The learned District Judge has held that market value of the acquired land was Rs.34,520/- as against Rs.30,000/- per bigha awarded by the Collector and therefore, the learned District Judge enhanced compensation at the rate of Rs.4520/- per bigha, compulsory acquisition charges at the rate of 30% per annum on the excess compensation were also allowed, interest at the rate of 9% per annum for the first year and at the rate of 15% for the remaining period on the excess compensation has been allowed from the date of taking over possession i.e. 10.5.1960 to the date of the payment of the aforesaid amount of excess compensation. It has further been ordered that the petitioner be paid interest on the amount of the

market value already assessed and paid by the Land acquisition Collector at the rate of 9% for the first year and at the rate of 15% for the remaining period, from the date of taking over possession i.e. 10.5.1960 to the date of payment/deposit.

7. The petitioners and respondents were aggrieved against the award. The petitioners have filed RFA No.155/98 and respondents have filed RFA No.174/98 against the impugned award.

8. I have heard the learned counsel for the parties and have also gone through the record.

9. The learned counsel for the petitioners has submitted that the learned District Judge has given less compensation, various deductions have been made from the market value of the land which are not permissible in law. The acquired land had high potential value and is situated near Rohru which is a fast developing town and where all modern facilities are available. The acquired land was most suitable for building purposes. The evidence has not been properly appreciated by the learned District Judge.

10. The learned Additional Advocate General has submitted that learned District Judge has assessed the market value on the higher side. The interest has been awarded wrongly. The petitioners are entitled to interest from the date of notification under section 4 and not from taking over of possession.

11. PW-1 Uma Shankar has placed on record certified copy of order dated 29.9.1994 in CWP No.569 of 1993, Kundlu Devi vs. Secretary PWD. PW-2 Harish Chand has stated that Smt. Kundlu Devi is his mother-in-law. The other petitioners are sons and

daughters of Smt. Kundlu Devi. Land measuring 8 bighas10 biswas of the petitioners was acquired by the State for construction of Lal Dhank-Ponta-Rajban Rohru road. This was acquired during the life time of Amar Singh who has died in the year 1988. The possession was taken over by the Govt. in the year 1960 and thereafter construction of the road was started. The petitioners have not been paid adequate compensation. The road has been constructed through the middle of the entire land of 19 bighas which has caused severance of the holding. The acquired land is at a distance of 500 meters from Rohru Bazar. All facilities such as school, post office, medical and Petrol pump etc. are available near the acquired land. In cross-examination he has admitted that acquired land is outsides the limits of N.A.C. Rohru. He has also admitted that after construction of the road there has been development in the area.

12. PW-3 Smt. Neel Pati has stated that she had purchased 3 biswas of land from Janki Dass in the year 1994 for a consideration of Rs.30,000/- vide sale deed, a copy of which is Ex.PC. In cross-examination she has admitted that she had purchased 3 biswas of land for construction of house. This land is on the side of the road which was constructed on the acquired land. She has further admitted that after the construction of the road the market value of the land has increased . She has also admitted that she had purchased the land at the rate more than the market rate in the area. This she had done as the land which she had purchased was on the road.

13. PW-5 Jia Lal has stated that Janki Dass was his father who has since died and had sold 3 biswas land to Smt. Neel Pati for a consideration of Rs.30,000/- in the year 1994.

14. PW-6 Samu Ram has stated that road was constructed on the land of Amar Singh in the year 1960. PW-7 Janki Dass has stated that he had purchased 4 biswas of land from Sohan Lal in village Gangtoli in the year 1994 for a consideration of Rs.30,000/- vide sale deed, a copy of which is Ex.PW-7/A. The land which was purchased by him is adjacent to the acquired land.

15. PW-8 Mast Ram Patwari, Office of Land Acquisition Collector, Rampur has placed on record copy of letter dated 24.2.1995 Ex.PW-8/A and copy of objections of Smt. Kundlu Devi Ex.PW-8/B, copy of notice dated 17.1.1997 Ex.PW-8/C and another copy of notice dated 17.1.1997 Ex.PW-8/D. In cross-examination he has stated that in pursuance of letter dated 24.2.1995 of District Collector, the Government of H.P. accorded the approval vide letter Ex.PW-8/E.

16. RW-1 Satish Kumar Kanungo, LAC office, Rampur has placed on record Ex.RW-1/A, copy of statement of average market price of the land prepared on the basis of transactions which took place between 31.12.1993 to 31.12.1994 pertaining to Mauza Gangtoli. He has stated that no transaction of sale has taken place in village Banchhuna during the period from 31.12.1993 to 31.12.1994. In cross-examination he has stated that village Gangtoli is at a distance of 2-3 K.M. from village Banchhuna where the acquired land is situated. Rohru bazaar is at a distance of 2-3 K.M.

from the acquired land. The acquired land was Karali Awal in the year 1960 when the road was constructed. This is the entire evidence led by the parties.

17. The learned District Judge in the impugned award has relied sale deed Ex.PC and sale deed Ex.PW-7/A which are nearer in time to the notification under Section 4 of the Act for assessing the market value of the acquired land. As per sale deed dated 19.12.1994, Ex.PC, PW-3 Smt. Neel Pati had purchased land measuring 0-0-14 Hectrs comprised in Khasra No. 463/1 for Rs.30,000/- from Janki Dass and vide sale deed dated 14.7.1994 Ex.PW-7/A Janki Dass had purchased land measuring 0-01-60 Hectrs comprised in Khasra No.463/4 for Rs.30,000/- from Sohan Lal. The learned District Judge has recorded a finding of fact that vide these two sale deeds 274 square yards land was sold and the average market value on the basis of these two deeds comes at Rs.1,64,380/- per bigha. This finding has not been assailed by either side. These sale deeds are of land situated in Gangtoli whereas the acquired land is situated in village Banchhuna . PW-2 Harish Chand has admitted that acquired land is out side the limits of NAC Rohru. The Ex.RW-1/A average market price of the land for the period 31.12.1993 to 31.12.1994 of mauza Gangtoli cannot be relied for assessing the market value of acquired land for want of deeds of transactions mentioned in Ex.RW-1/A.

18. Learned District Judge has rightly drawn the inference that market value of the acquired land cannot be equal to market value of land mentioned in sale deeds Ex.PC and Ex.PW-7/A . The

market value of the land in municipal area is invariably on the higher side in comparison to the market value of the land outside the municipal area. The acquired land is immediately outside the limits of NAC area. In order to assess the market value of the acquired land, learned District Judge has rightly reduced it to half in comparison to the market value of the land mentioned in sale deeds Ex.PC and Ex.PW-7/A which are of land situated within NAC area. He has rightly come to the conclusion that as against value of land Rs. 1,64,380/- per bigha on the basis of sale deeds Ex.PC and Ex.PW-7/A, the value of the acquired land is Rs.82,190/- per bigha.

19. The learned District Judge has made 30 % deduction from the value so arrived on the ground that construction of the road has contributed in the escalation of the market value of the land in area. Therefore, after allowing 30% deduction he has fixed the value of the acquired land Rs.57533/- per bigha. But again from this value he has made further deduction of 40% on the ground that since the area acquired is big chunk measuring 8 bighas 10 biswas and the acquired land was to be utilized for the construction of houses, a considerable part of it would have been utilized for making provisions for paths, drains etc. and therefore he ultimately assessed the market value at Rs.34520/- per bigha. No doubt learned District Judge has adopted correct method in assessing the value of the acquired land at Rs.82190/- as noticed above but thereafter deductions at the rate of 30% and 40% as discussed above are not proper for assessing the market value of acquired land. The acquired land is a big chunk measuring 8 bighas 10 biswas and had high potential for

construction of houses, therefore, only lump sum deduction of 33% is justified as has been held by the Supreme Court in ***V.Hanumantha Reddy (dead) by LRs. vs. Land Acquisition Officer & Mandal R. Officer (2003) 12 Supreme Court Cases 642*** as follows:-

> **7** *"The land may be having high potentialities or it may be proximate to the developed land, but that itself would be no ground for not deducting the development charges. This Court in Kasturi v. State of Haryana held that it is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. This Court also pointed out that there is difference between a developed area and an area having potential value, which is yet to be developed. It was further pointed out that the fact that the land is developed or adjacent to a developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot."*

20. In ***H.P. Housing Board v. Bharat S. Negi and others (2004) 2 Supreme Court Cases 184,*** it has been held by the Supreme Court as follows:-

> **5**. *" In our view the approach of the Reference Court was correct. As all sale instances were proved, they were all to be taken into consideration. If all the sale instances are taken into consideration the average would*

work out to Rs.1,11,660 per bigha. But as all the sale instances are of small pieces of land and the acquisition is of the large piece of land, a deduction of 33 1/3rd% must be made towards development cost. Thus the compensation would work out to Rs.74,444 per bigha

21. In view of ***V.Hanumantha Reddy case and H.P. Housing Board*** (supra) and taking into consideration that the transactions covered by sale deeds Ex.PC and Ex.PW-7/A are of small area, I am of the opinion that 1/3rd deduction is to be made from Rs.82190/- per bigha, so as to arrive at correct market value of the acquired land which comes to Rs. 54794 (Rs.82190 – 27396) per bigha as against Rs.30,000/- per bigha assessed by the Collector. Hence, market value of the acquired land is assessed at Rs.54794/- per bigha as against Rs.30,000/- awarded by Collector. The finding of learned District Judge regarding market value of the acquired land is accordingly modified. The petitioners under Section 23(1)-A in addition to market value of the land as assessed above are entitled to increase at the rate of 12% per annum on the market value from the date of notification under Section 4 i.e. dated 31.12.1994 to the date of award of the Collector i.e. 9.8.1995, the petitioners are also entitled to 30% solatium under Section 23(2) of the Act on the market value.

22. The petitioners have not placed any material on record to prove loss/damage they have suffered due to alleged severance of their holdings. Therefore, the petitioners are not entitled to any claim for alleged severance of their holdings.

23. The learned District Judge has allowed interest at the rate of 9% and 15% per annum from the date of possession of the acquired land i.e. 10.5.1960. The learned Additional Advocate General has submitted that the petitioners are not entitled to interest from the date of possession and interest is payable from the date of notification under Section 4 of the Act which in the present case is 31.12.1994. There is force in the contention of the learned Additional Advocate General. In ***R.L. JAIN (D) BY LRS. Vs. DDA AND OTHERS (2004) 4 Supreme Court Cases 79,*** it has been held by the Hon'ble Supreme Court in para-12 as follows:-

> " *The expression "the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited" should not be read in isolation divorced from its context. The words "such compensation" and "so taking possession" are important and have to be given meaning in the light of other provisions of the Act. " Such compensation" would mean the compensation determined in accordance with other provisions of the Act, namely, Sections 11 and 15 of the Act which by virtue of Section 23(1) mean market value of the land on the date of notification under Section 4(1) and other amounts like statutory sum under sub-section (1-A) and solatium under sub–section (2) of Section 23. The heading of Part II of the Act is "Acquisition" and there is a sub-heading "Taking Possession" which contains Sections 16 and 17 of the Act. The words "so taking possession" would therefore mean taking possession in accordance with Section 16 or 17 of the Act. These are the only two sections in the Act which specifically deal with the subject of taking possession of the acquired land. Clearly, the stage for taking possession under the aforesaid provisions would be reached only after publication of the notification under Sections 4(1) and 9(1) of the Act. If possession is taken*

prior to the issuance of the notification under Section 4(1) it would not be in accordance with Section 16 or 17 and will be without any authority of law and consequently cannot be recognized for the purposes of the Act. For parity of reasons the words "from the date on which he took possession of the land" occurring in Section 28 of the Act would also mean lawful taking of possession in accordance with Section 16 or 17 of the Act. The words " so taking possession" can under no circumstances mean such dispossession of the owner of the land which has been done prior to publication of notification under Section 4(1) of the Act which is dehors the provisions of the Act".

24. In ***2003 (1) Shim. L.C. 474, State of H.P. and another vs. Kalawati*** and others, a Division Bench on this Court has held that interest is payable for the land acquired only from the date of notification under Section 4 of the Act and not prior to it.

25. The result of the above discussion is that RFA No.155 of 1998 and RFA No.174 of 1998 are partly allowed and the impugned award is modified. The market value of acquired land measuring 8 Bighas 10 Biswas is assessed at Rs.54,794 per Bigha. The petitioners are further entitled to 12% per annum increase on the market value under Section 23 (1-A) of the Act from the date of notification under Section 4, i.e. 31.12.1994 to the date of award of the Collector i.e., 9.8.1995 and 30 % solatium on the market value under Section 23(2) of the Act. The petitioners are also entitled to 9% interest per annum on the excess compensation from 31.12.1994 to 31.12.1995 and thereafter at the rate of 15% interest per annum till deposit of amount in the Court. No costs.

(Kuldip Singh)
Judge

June 28, 2007
(sks)